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7. If the wife have a fortune, and is in the administration of it, and the husband little or none, she is bound to pay or contribute at least half of the matrimonial charges. ..... *ib.*

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Anderson's Administrator vs. *Birdsall's Administratrix*. 441

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3. The fee of attorney of absent heirs is chargeable to their share of the estate and to the estate itself. ..... *Hiscm* vs. *Lemel's Curator.* 425

4. The cost of erecting tombs over the grave of the deceased, forms no part of the funeral expenses, and the curator has no authority to expend the means of the estate for this purpose without the consent of the heir. ..... *ib.*

5. Where the curator, in compliance with a verbal request of the deceased in his last sickness, and with the implied assent of the heir, erects tombs over the deceased and his wife, he will be allowed the sum expended, in his account against the estate. ..... *ib.*

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3. The capacity of the donor to give, in relation to donations *mortis causâ*, reference must be had to the time of the donor's death, because it is not until then that the donation takes effect..... *Criswell* vs. *Seay et al.* 598

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1. Where the purchaser is actually disturbed and in danger of eviction of the thing sold, he may require security, before payment of the price can be demanded: But being in possession and enjoyment of the property, he must pay interest, or consign and deposit the price..... *Ball et al.* vs. *Le Breton et al.* 147

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Edwards et al. f. p. c. vs. *Martin's Heirs et al.* 284

4. In regard to agreements having for their object certain quantity or amount, as in sales, leases, &c., the damages were not to exceed the value of the subject matter of the contract..... *ib.*

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6. The principles of the Roman law, which never had the force of positive law in this country, but which are founded in equity and reason, will be adopted as rules regulating the indemnity to which a party is liable on his warranty. *ib.*

7. So it is impossible that parties ever contemplated that the damages in case of eviction should be larger than the value of the subject matter of the contract. *ib.*

8. So where the vendee of a female slave purchased in 1802, was evicted and the vendor refunded the price; is afterwards evicted of her increase or children, the vendor is only bound for damages to the amount of the value or original price of said slave; and not the value of the young slaves, born of her after the sale, although much greater..... *ib.*

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Agricultural Bank of Mississippi vs. *Barque Jane, &c.* 1

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Flower vs. *Millaudon,* 185

3. Evidence which is inadmissible to prove title, may be received to show possession by known marks and boundaries, which is good to sustain the plea of prescription.....*Broadway's Heirs* vs. *Pool.* 238

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Slatter vs. *Holton.* 39

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12. The record of a suit pending in the Supreme Court of another State is inadmissible in evidence when it is irrelevant and tends to controvert a judgment between the same parties in this State. ..... *ib.*

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16. Where the right of ferry depends on a condition, evidence should be received to show the condition has not been performed. ..... *ib.*

17. The certificate of the commandant, stating that a certain road was made, as required by the condition of a grant of the perpetual right of ferry, is not conclusive, but only *prima facia* evidence of the fact, which may be contradicted. ..... *ib.*

18. Evidence is admissible to show that a ferry, which is claimed under an exclusive grant from the Spanish government, was in fact kept under the control and supervision of the Police Jury. ..... *ib.*

19. Instruments of writing, such as grants, certificates, &c., are admissible in evidence, without proof of their signatures. They are *prima facia* evidence; and may be contradicted by showing, that they were not acting in the capacity they purport. ..... *ib.*

20. The transfer of a grant or privilege may be proved by comparison of handwriting, when the signature of the witness is shown to be genuine, and he is dead. *ib.*

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Huey vs. *Drinkgrave*. 432

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Zacharie & *Co.* vs. *Rogers* & *Harrison*. 223

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3. The plaintiff in injunction, who is non-suited, is entitled to a suspensive appeal on giving his bond for the amount of the costs, and one half over.
State of Louisiana vs. *Judge of the First District.* 167

4. In an injunction case to restrain the adverse party from taking out an order of seizure and sale, when the plaintiff is non-suited, a writ of prohibition will be granted to the judge *a quo*, prohibiting him from proceeding to allow the order of seizure, until the party is heard on his appeal..... *ib.*

5. Such as the injunction originally was before the judgment of non-suit, so it remains until the appeal is tried; and no proceedings can be had until it is finally decided in the Supreme Court..... *ib.*

6. Interest on the dissolution of injunctions cannot exceed ten per cent.; if the judgment enjoined bears ten per cent. interest; all above that sum which is allowed must be in the way of damages if the injunction is dissolved.
R. McCarty vs. *J. P. McCarty.* 300

7. Where a judgment, which is enjoined already, bears interest at ten per cent. per annum, no further interest can be allowed on a dissolution of the injunction.....*Smith* vs. *Brownson.* 313

8. Interest on the dissolution of the injunction may be increased to ten per cent.; but whatever else, that may be allowed against the plaintiff and his surety in injunction, should be given as damages..... *ib.*

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9. On the dissolution of injunctions under the statute of 1831, this court has sometimes allowed as damages, the expenses for professional services, which the creditor enjoined has incurred in setting the injunction aside, when improperly obtained.....*Melanpon's Heirs* vs. *Robichaud's Heirs*. 357

10. The defendant in injunction enjoining his order of seizure and sale, changes the proceedings from the *via executiva* to the *via ordinaria*, when he prays for judgment against the debtor. In cases of this kind no damages should be allowed, and judgment must be given as in an ordinary suit.
McMillen vs. *McKerroll et al.* 372

11. The courts will not assess damages on a plea in re-convention, in a suit by injunction or sequestration. The party must take his remedy on the bonds given by the plaintiff in injunction.....*Patin* vs. *Blaize, jr.* 396

12. Damages for the wrongful suing out an injunction may be claimed in the same suit, under the provisions of the act of 1831, in cases embraced by this act; but from its wording it seems to apply particularly where judgments are enjoined..... *ib.*

13. When it appears in the progress of the trial, that a payment is made of part of the debt; although the injunction may have to be dissolved for want of an allegation of payment, yet a new one for the amount should be granted and perpetuated..... .....*Woodburn* vs. *Friend et al.* 496

14. Where the party is entitled to a new injunction *instanter* for a part of the debt, on the dissolution of the first, he will not be mulct in damages..... *ib.*

INSOLVENCY.

1. An insolvent debtor may make valid sales of his property at any time before actual insolvency, when no preference is given to any creditor over others.
Crocker, Syndic, &c. vs. *Champlin.* 12

2. The oath of an opposing creditor is not necessary to his opposition made to the appointment of a syndic.....*Girard et al.* vs. *Their Creditors.* 246

3. The syndic cannot claim the reversal of a judgment, which reduces his claims on his tableau, and when he and none of the creditors, whom he represents, are aggrieved.....*Ferguson & Hall et al.* vs. *Their Creditors.* 278

4. So where a creditor's claim is reduced from a privileged to an *ordinary one*, and he does not appeal, the syndic representing the *mass* of creditors, who are benefited, cannot appeal or have the judgment altered..... *ib.*

5. A privileged claim of the vendor will not be allowed on the goods of the insolvent, mingled with an old stock, and when they are not identified..... *ib.*

6. Where it is not shown or does not appear, that the insolvent was a merchant or trader, or ever kept any books, he will not be denied the benefit of the insolvent laws, for not depositing any books in court.....*Wilson* vs. *His Creditors.* 33

7. When the evidence of the debt and writ of arrest are produced, it is sufficient to show, the debtor is in actual custody; to entitle him to the benefit of the law for the relief of debtors in actual custody..... *ib.*

8. Where the debtor makes a cession of his property, which has been sequestered, it should be delivered up to the syndic to be sold; the privilege or

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claim of the suing creditor being preserved on the proceeds; and the sequestration is consequently cancelled.....*Duclerc* vs. *Crebassol et al.* 91

9. It is necessary to allege and show, that an absconding insolvent debtor was a merchant or trader under the act of 1826, to sustain an action for a forced surrender. The allegation must be made in the pleadings, in order to let in evidence in proof of it.....*Shakespeare et ul.* vs. *Saunders.* 97

10. A sale by the father to his son not a creditor, of his estate for a sound price, where there is no privity between the latter and the creditors of his father, and none between the father and the creditors, *is valid*, although the father was insolvent at the time, and the son agreed and did apply the *price* to the payment of a portion of the creditors. Nor is the mere relationship of the father and son evidence of fraud.....*Maurin & Co.* vs. *Rouquer et al.* 504

INSURANCE.

1. Where the insured sells the property covered by the policy, and afterwards takes it back on account of the non-payment of the price, and is in possession at the happening of the loss, she will recover, although a clause in the policy provides, it shall be void in case of transfer or assignment, without the consent of the insurers.....*Power, tutrix, &c.* vs. *Ocean Insurance Company.* 28

2. By the implied resolutory clause in her sale, the plaintiff was restored to the possession and ownership of her property before the loss, as if no transfer had taken place..... *ib.*

3. It is sufficient if the insured has an interest in the property, at the time of insuring, and at the happening of the loss..... *ib.*

4. The bill of lading is sufficient evidence of ownership to entitle the shipper to recover the insurance, even against the testimony of witnesses to the contrary. *Page* vs. *Western Marine & Fire Insurance Co.* 49

5. A fair and *bona fide* sale of damaged property, under circumstances, that render its shipment to the port of destination impossible, except in a very damaged condition, is the best that can be done for all concerned, and the underwriters cannot complain..... *ib.*

6. The master of a boat or vessel, whose cargo is damaged by the perils insured against, so as to render its re-shipment inexpedient and unprofitable, has authority to sell it for the best price at the place, and for the benefit of all concerned.....*Vaughan* vs. *Western Marine & Fire Insurance Co.* 54

7. The effect of a valid abandonment of the object or property insured, is to transfer it to the underwriters, who take the place of the insured. *Hooper et al.* vs. *Whitney.* 207

8. The underwriters are subrogated to the rights of the insured by the abandonment, which also goes to include the *spes recuperandi*..... *ib.*

9. So a sale of a vessel at the port of necessity by the master under necessitous circumstances, vests the purchaser with a good title. The insured, after abandonment, cannot set up any claim or maintain an action against the purchaser to recover her..... *ib.*

10. Memorandum articles are liable to no constructive or total loss, so long as they continue of *any value*; although they are so damaged as to be rendered

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absolutely of no value, still if they remain *in specie*, or can be designated by the same name, the underwriters are not liable for a total loss.

Skinner & *Kennedy* vs. *Western Marine* & *Fire Insurance Co.* 273

11. So where a boat loaded with pork in bulk, some flour and beans, was partly consumed by fire, but the bottom floated on to the port of destination, with about 11 per cent. of the cargo of pork; it being much roasted and barbacued, but was still recognized as pork: *Held*, that the insurers were not liable for a total loss. *ib.*

12. The fact of the property of the insured, being purchased by his son at a sale made by the master of the damaged cargo, is not sufficient to prove that the purchase was made on account of his father, or in any manner to affect the validity of the sale. *Vaughan* vs. *Western Marine* & *Fire Insurance Co.* 276

13. A competent crew is necessary to the sea worthiness of a boat or ship; but if one is provided, the occasional absence from the vessel of a hand or seaman, on the business of the voyage, does not defeat the policy; especially when his presence could not have prevented the accident.

Caldwell et al. vs. *Western Marine* & *Fire Insurance Co.* 42

14. A strong case of necessity is required to justify a master in selling his boat or vessel and cargo, if other means of saving either be within his reach. But where he acts with fairness, and uses all proper diligence to save both, he will be justified by the necessity of the case, in selling both the boat and cargo. *ib.*

15. The master of a boat, whose cargo is materially damaged by one of the perils insured against, is not bound to wait a great length of time, at a heavy expense, to overhaul, repack and reship the cargo, when but little or nothing would be saved. He may exercise a sound discretion and sell it in its damaged state for the best price and benefit of all concerned.

Robertson et al. vs. *Western Marine* & *Fire Insurance Co.* 227

16. The purchase of property damaged by the perils insured against, by the owner, who has been insured, is illegal and has the effect of revoking his abandonment, and turning the total into a partial loss, which is all that can be recovered. *ib.*

17. After abandonment the insured becomes the agent of the underwriters, and standing in that relation, he cannot purchase, except with the consent of his principals. The master and owner both become agents of the insurers, on abandonment. *ib.*

18. Custom or usage in the country, of owners buying in their property, when sold as damaged for account of the underwriters, cannot justify *that* which by the law of insurance has been held to be unlawful. *ib.*

INTEREST.

1. Where notes, given for the price of property producing fruits and revenues, are by agreement or otherwise to remain deposited and payment suspended until defects in the title are cured; on their restoration, payment of the interest arising *ex-morâ* will be decreed, as a compensation for the fruits of the thing sold, when it remained in the enjoyment of the vendee.

Ball et al. vs. *Le Breton et al.* 147

2. The purchaser who wishes to relieve himself from the payment of interest, must avail himself of the faculty given him to *deposit the price* due by him. *ib.*

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3. Legal interest from judicial demand on liquidated claims will be allowed, when the party was first in delay.....*Brownson* vs. *Fenwick*. 431

INTERVENTION.

1. Intervenors have no right to come in and contest the jurisdiction of the court in which the plaintiff had a right to sue. They must take the case as they find it; and if their interests are effected, it is the result of their own acts.

Kenner & Co.'s Syndic vs. *Holliday et al.* 154

JUDGMENTS.

1. Judgment affirmed with the maximum of damages for a frivolous appeal.

Kolligs' brothers vs. *Meeks*. 75

2. A judgment which has become definitive, cannot be set aside by consent of *parties*, especially when all the parties interested are not present; nor can an attorney deprive his client of the benefit of his judgment without a special power to do so.....*Morgan, Dorsey & Co.* vs. *Their Creditors*. 84

3. A judgment homologating a tableau of distribution is one in favor of each creditor to whom a dividend is assigned; and has the effect of *res judicata* in relation to the proceeds or money in the hands of the syndic..... ib.

4. Judgment affirmed; the record being imperfect, so as to preclude an examination of the case on the merits.....*Beach & Co.* vs. *Wagner et al.* 86

5. A judgment obtained in the last resort is final and conclusive between the parties to it; although it may not be so as to third persons: nor can a change by the common debtor making a surrender, affect the rights of the judgment creditors, who have a privilege or mortgage on the property ceded.

Skipwith vs. *His Creditors*. 196

6. In a petitory action when the defendant exhibits the best title, he will be entitled to *final judgment in his favor*, and not merely one of non-suit.

Guidry vs. *Woods*. 334

7. A judgment which states that it was rendered by *consent* of parties; especially when it does not appear the defendant ever was cited or made a party to the suit, *is illegal*.....*Broussard* vs. *Broussard*. 354

8. The case depends entirely on facts and calculations made by Auditors and the inferior court, which are approved and judgment affirmed.

Parry vs. *Hannon*. 358

JURISDICTION.

1. A married woman may sue her tutor, in the Court of Probates, for the balance due her; and maintain the action with the assistance of her husband, on a note given in his name, as her agent, for a part of the sum coming to her.

Thibodeaux vs. *Thibodeaux*. 49

2. This court will take jurisdiction of a suit for separation from bed and board, although the matter in contestation is not *appreciable in money*, or does not consist in a money demand exceeding 300 dollars.....*Rowley* vs. *Rowley*. 69

3. The law expressly gives the courts jurisdiction in cases of separation

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from bed and board, and in actions of divorce; and this court will not hesitate to act under it, when they have not the slightest doubt of the constitutionality of the law..... 557

JURY.

1. When an important fact which is submitted to a jury, is not positively proved, but only *inferred* from the evidence, their verdict is entitled to great weight, and will not be set aside unless manifestly erroneous.
Vaughan vs. *Western Marine and Fire Insurance Co.* 54

2. The verdict of a jury in a case depending only on facts will not be disturbed, when not manifestly erroneous.....*Nott & Co.* vs. *Kirkman et al.* 14

LANDS AND LAND LAWS.

1. Admitting the plaintiffs are owners of the upper end of a larger tract of land, yet if they show no location by an authorized survey embracing the *locus in quo*, they cannot maintain an action even of trespass against a possessor so as to oust or disturb him..... .....*Hornsby's Heirs* vs. *M'Dermott.* 304

2. The certificate of purchase from the register and receiver is not final evidence of title out of government, when it is shown the entry and purchase was improperly allowed; although generally such certificates are considered as sufficient evidence of a sale from the government as to form the basis of a petitory action.....*Guidry* vs. *Woods.* 334

3. The register and receiver are to decide on the fact whether the applicant for a pre-emption is in possession and has cultivated the land within the previous year; but if they undertake to grant a pre-emption to land, which the law declares shall not be granted, they are acting on a subject matter clearly not within their jurisdiction..... *ib.*

4. The commissioner of the General Land Office under the supervision of the secretary of the treasury, has the power to declare what lands, according to law, are liable to entry or location by pre-emption rights or floats; and may cancel the certificate of the register and receiver in this respect..... *ib.*

5. The evidence and deposition of the land commissioner, of cancelling the register and receiver's certificate of land, not liable by law to be sold or entered as pre-emption rights or floats, is admissible in proof of these facts..... ... *ib.*

6. Fractional townships fronting on water courses are surveyed in small tracts or lots of about 160 acres each, and numbered, but the lot or fractional section numbered 16, is not designated by law as school lands. It is only under the general laws, and where the township is surveyed in square sections that every 16th section is reserved as school land.....*Barton's Executrix* vs. *Hempkin.* 510

7. In fractional or irregular townships on water courses the secretary of the treasury is required by law to select and designate the school lands..... *ib.*

8. The chief clerk in the general land office, being designated by law to act as commissioner in case of vacancy, &c., he is therefore an officer known to the law, to be recognized as such and presumed to be acting in accordance with law..... *ib.*

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9. Registers and receivers are to decide on the facts and sufficiency of proof in cases of pre-emption when no fraud exists; but if they sell land exempted from sale by law, their acts are void for want of authority.

Burton's Executrix vs. *Hempkin.* 510

10. The commissioner of the General Land Office may at least suspend if not annul titles granted by the register and receiver, until Congress or the courts can act. ..... *ib.*

11. The mere statement of the commissioner of the General Land Office that he has cancelled a certificate of purchase given by the register, &c., is not an eviction which should rescind a sale between third parties. ..... *ib.*

12. It is essential to the validity of an entry that the land intended to be appropriated, should be so described as to give notice of the appropriation to subsequent locators. ..... *Patin* vs. *Blaize, Jr.* 396

LAWS.

1. Remedial statutes or laws have no extra-territorial effect or operation.

Briggs, Lacoste & Co. vs. *Campbell.* 524

2. The interpretation of contracts depends upon the foreign law; but the remedies by which the obligation resulting from contracts are sought to be enforced, must be according to the forms and law of the place where the remedy is sought. ..... *ib.*

3. The last article (3521,) of the La. Code, which repeals all laws in every *case* provided for in the Code, itself, applies not in every particular instance or cause, but to every *category* or *class of cases*, or *subject matter* upon which the Code contains express provisions, and abrogates all previous laws on these subjects. ..... *Waters* vs. *Petrovic & Blanchard.* 584

4. This court has held (in 5 La. Rep. 493,) that part of the act of 1808, relative to proceedings upon prison bonds was still in force, notwithstanding the repealing act of 1828, and the Code of Practice. ..... *ib.*

LEASE.

1. Interest cannot be recovered for rent arrear, from the time it became payable; but only from judicial demand. ..... *Perret et ux.* vs. *Dupré et al.* 341

2. So a party is not bound to repair the leased premises when it can only be done by erecting new buildings. The adverse party may annul or put an end to the lease. ..... *ib.*

MINOR.

1. The father or mother of a minor, or person in whose charge the minor is left are responsible for the injury he may do to another; but this responsibility is based on the ground that the person having control of him could have prevented the act and did not; and is responsible for neglect.

Cleaveland vs. *Mayo et ux.* 414

2. But where a person, having control of a minor, causes or commands him to commit a crime, or an act causing damage and injury to another, such

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person is responsible as having committed the offence, although an irresponsible person has been interposed. ..... *Cleaveland* vs. *Mayo et ux.* 414

3. Where a person has treated with a *minor*, he cannot plead the nullity of the agreement, when sought to be enforced after the disability has ceased.

Anderson's Administrator vs. *Birdsall's Administratrix.* 441

MORTGAGE AND PRIVILEGE.

1. A third purchaser of an estate, subject to certain mortgages, which she assumes to pay, cannot set up her own claims in opposition to the mortgage creditor on said estate. ..... *Kenner & Co's Syndic* vs. *Holliday et al.* 154

2. Where notes are given in renewal of those sued on, although such renewal may not operate a novation, so as to affect the mortgage by which ultimate payment is secured, no recovery can be had until the new notes are produced. ..... *Plicque & Le Beau* vs. *Perret, &c.* 318

3. The value of the hire and use of slaves, mortgaged and put in possession of the mortgagee, to indemnify him against an endorsement, will be allowed in compensation of the amount actually paid by him as endorser.

Hutchings' Widow and Heirs vs. *Johnson's Heirs.* 437

4. A mortgage executed by the maker of a note, to secure the endorsers, becomes null when there are no steps taken to fix their liability; and the transfer to the holder of the note after the endorsers are discharged for want of protest and notice, confers no rights on the transferee. ..... *Peets* vs. *Wilson.* 478

5. The fact of an endorser taking a mortgage from the maker of a note to indemnify him against loss, does not dispense with demand protest and notice. *ib.*

NEW TRIAL.

1. A new trial should not be granted, to enable the party to prove the tender of a slave in a redhibitory action, on the ground of an oversight in his counsel to prove it on the trial, when it does not appear, any diligence was used to procure proof. ..... *Houghteling* vs. *Fisher.* 475

2. The discretion of the Supreme Court, to remand causes for a new trial, will be exercised only in extreme cases, when the party has shown due diligence and is guilty of no *laches*. ..... *ib.*

NOVATION.

1. Where notes are given in renewal of those sued on, although such renewal as between the parties may not operate a novation, so as to affect the mortgage by which ultimate payment is secured, yet the plaintiff cannot recover without producing or satisfactorily accounting for the notes given in renewal.

Plicque & Lebeau vs. *Perret, &c.* 318

OBLIGATIONS.

1. Where persons representing a succession executed their notes to the cre-

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ditor for the original debt due by it and secured by mortgage, their obligation is in the nature of the *pactum constitutæ pecuniæ*, engaging their *personal liability*, that the debt should be paid within a certain time, or the creditor be at liberty to seek payment according to his original right on his mortgage.

McDonogh vs. *Relf* & *Zacharie*, *&c.* 100

2. If the new obligation be for more than was legally or actually due on the original one, the mistake being discovered, the *pact* or *new obligation* is void *pro tanto* for want of a debt which was the foundation of it..... *ib.*

3. The recognition of a debt is always to be understood with reference to a *primordial title*; and if the party is obliged further, or otherwise than as the primary title imports, on showing the error he will be relieved..... *ib.*

4. So where R. & Z. being heirs of a succession and administering it as executors, gave their notes to the creditor by the original debt and mortgage, who reserved the right to go upon the mortgage if the notes were not punctually paid, and did so after the payment of the first note; and in which, the debt was ascertained by a judgment to be *much less* than the amount for which the new obligation was given: *Held*, that there was error for this amount, and the new obligation can have no effect..... *ib.*

5. Bullard J. & Martin J. *dissenting*. The failure to give notice of the extinguishment of a mortgage, did not forfeit accruing interest; it only authorized a *suspension* of payment. Interest still runs in such a case, although not exigible..... *ib.*

6. If it be of the essence of the *pactum constitutæ pecuniæ* that there should be a pre-existing debt, it is only to distinguish it from a donation; but it suffices if the debt, the payment of which is promised, should be due in *foro conscientiæ*; and that there should exist a just subject for payment, although it may be in *foro legis* declared null..... *ib.*

PARTNERSHIP.

1. Where a party has made himself liable to creditors by dealing with the firm, although not a partner, and has been compelled to pay a partnership debt to a creditor, he will recover it back from the firm.....*Flower* vs. *Millaudon.* 185

2. All the partners in a commercial firm must join in an action or obligation due to the partnership; and on the dissolution of the partnership by the death of one of the partners, the surviving ones must join the representatives of the deceased, or obtain authority from the proper tribunal, before they can sue for a partnership debt.....*Hyde et al.* vs. *Brashear.* 402

3. The incapacity of surviving partners to sue without obtaining authority or joining the representatives of the deceased, need not be specially denied. It may be assigned for error..... *ib.*

4. The representatives of the deceased partner must be joined, or authority from the Court of Probates obtained, in a suit by the surviving partners, due the partnership.....*Babcock, Gardiner & Co.* vs. *Brashear.* 404

PAYMENT.

1. Compensation and payment must be specially pleaded to enable the de-

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fendant to make proof of either.....*McKown* vs. *Mathes.* 542
2. But an amendment setting up the plea of payment and compensation, comes too late after the trial commences and the jury are sworn..... *ib.*
3. A receipt of full payment by the original *payee* to the maker of a note, offered against the holder, will be disregarded when shown to be collusive, and when it is contradicted by other evidence.....*Bienvenu* vs. *Segura.* 346
4. Where the creditor does not suspend his execution so as to put it out of his power, or the surety (if he pays,) to pursue the debtor, it is no prolongation of the time of payment.....*Woodburn* vs. *Friend et al.* 496

POSSESSORY ACTION.

1. In a possessory action the civil possession of the plaintiff, preceded by an actual and corporal detention of the thing, will suffice, as it allows him the benefit of the previous corporal possession of his author.....*Ellis* vs. *Prevost et al.* 251
2. The court do not recognize the doctrine, that there is but one kind of possession; and that civil possession will suffice in all cases in possessory actions.... *ib.*
3. Possession is acquired by the actual and corporal detention of the property; this is natural possession or possession in fact; and it is preserved and maintained by the mere will or intention to possess, and this is civil possession or possession in right..... *ib.*
4. So where a person is disturbed in his possession, he has the right, within a year and by virtue of his civil possession, founded on his previous corporal and actual possession to institute the possessory action, to recover it..... *ib.*
5. The person claiming by possession alone, without showing any title, must prove an adverse possession by inclosures, and his possession cannot extend beyond.....*Ellis* vs. *Prevost et al.* 521
6. Where a citizen peaceably takes possession of a portion of public land or domain, to which no private claim is set up, and improves it, none but the government can disturb him in the possession of what he has actually inclosed. *Miller* vs. *Lelen.* 531
7. Where the vendor and vendee live in the same house, *possession* follows title.....*Kemper's Heirs* vs. *Hulick.* 349
8. So where the son was possessed of a slave, who was assessed in his name, and lived in the common dwelling with his father at his death, and his widow took the slave with her when she removed: *Held,* that she was the legal possessor..... *ib.*
9. The plaintiff is not bound to show a perfect title to recover against a trespasser without title, provided he has actual possession. When a civil possession is relied on alone, the title must be *prima facie,* such as would be translative of property.....*Patin* vs. *Blaize, Jr.* 396
10. Title papers are admissible in evidence in a possessory action, to show the extent and limits of the plaintiff's possession; although no inquiry can be had as to the validity of titles in this action.....*Lecomte* vs. *Smart.* 484
11. Where a person takes possession of land under an apparent title as his own, slight acts will be received as evidence of an intention to take actual possession..... *ib.*

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12. But where a man without any pretence of title, goes upon land claimed by another, he must show unequivocal acts of possession, more *than a year*, to maintain the plea of prescription. 484

PRACTICE.

1. Signatures to the notes and checks sued on, are admitted by the plea of the general issue. ..... *Beach & Co.* vs. *Wagner et al.* 36

2. If the pleadings state the non-residence of the plaintiffs, their absence and right of their attorney to make affidavit for them, will be presumed, when the contrary is not alleged or shown. ..... *Austin et al.* vs. *Latham.* 81

3. It is entirely a discretionary power in the inferior courts, to order a case to be sent before auditors, to facilitate the trial of causes by the investigation of accounts. ..... *Guinault* vs. *Le Carpentier.* 230

4. Where the verdict of a jury appears manifestly erroneous, the cause will be remanded for a new trial. ..... *ib.*

5. When the judgment of the court is confined to the points filed or raised in the argument of the case, it will not listen to an application for a re-hearing on other grounds, suggested after the cause has been decided.
Caldwell et al. vs. *Western Marine & Fire Insurance Co.* 43

6. Where the plaintiff failed to make out her case by full proof, the court on consideration, set aside the non-suit and remanded the cause for a new trial. ..... *Barton's Executrix* vs. *Hempkin.* 517

7. In a petitory action, when the defendant exhibits the best title, he will be entitled to final judgment in his favor, and not merely one of non-suit.
Guidry vs. *Woods.* 535

8. It is not enough that a party renders his rights and claim probable in a court of justice; he must make them legally certain. ..... *Skipwith* vs. *His Creditors.* 196

9. When all the promises and contracts are set out in the pleadings, if any one of them will authorize judgment, the court should render it. Irrelevant or useless matter does not vitiate the good. ..... *Rawle etc.* vs. *Skipwith et ux.* 207

10. The party having the legal title may sue for the benefit of whom he pleases; in the same manner as he might dispose of the funds after judgment, if he sued in his own name. ..... *ib.*

11. Where a case is dismissed on an exception in *limine litis*, the Supreme Court cannot examine it on its merits. It must be remanded for a *new trial*. ..... *ib.*

12. Where the plaintiff makes that hardly probable, which he was bound to make certain, and where there is a verdict against him, he is not entitled to be relieved; but if the verdict is against the defendant, in such a case a new trial ought to be granted. ..... *Barrett* vs. *Bullard.* 281

13. Where the evidence does not support the charges in a physician's bill, the court will give such judgment as may appear reasonable and equitable from the proof and circumstances of the case. ..... *Lefebre* vs. *Lastrapes.* 353

14. A slight variation in setting out the name of a corporation will not affect the right to maintain the action. ..... *Canal Bank* vs. *Fisher.* 365

15. Persons responsible for a trespass or injury in different capacities need

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not be joined in the same action, although if liable in the same way, all must be joined as in a joint action. ..... *Cleaveland* vs. *Mayo et ux.* 414

16. Where the quantum of damages is not proved or is left doubtful, the case will be remanded to ascertain them. ..... *Riggs* vs. *Duperrier et al.* 418

17. After a judgment by default, and answer to the merits, an exception denying the defendant's capacity to be sued as administratrix, is not admissible. *Cleevers* vs. *Burke's Administratrix.* 429

18. Where a case comes up on a judgment of non-suit in which there was no trial on the merits, or bill of exception taken, this court cannot go into the merits. ..... *ib.*

19. When a demand is afterwards set up for services growing out of a transaction already settled between the parties, for which no charge was made, and it is not shown the settlement was erroneous, it will be presumed the services were gratuitous. ..... *Brownson* vs. *Fenwick.* 431

PRESCRIPTION.

1. Evidence which is inadmissible to prove title may be received to show possession by known marks and boundaries, which is good to sustain the plea of prescription. ..... *Broadway's Heirs* vs. *Pool.* 258

2. The plea of prescription may be filed or amended on the trial, after the plaintiff has closed his evidence. It is a plea favored in law, and may emphatically be filed at any time. ..... *ib.*

3. The possessor of slaves under a just title, in good faith, will be protected by the prescription of five years. ..... *Blanchard* vs. *Castille.* 362

4. The plea of prescription of one year is not applicable to a workman's account, for work done by the job, and materials furnished, whether it be under a specific agreement or on a *quantum meruit*. ..... *Ariall* vs. *Fenwick.* 413

5. The action on a curator's bond against the sureties is not prescribed by the lapse of one year. It is an action arising *ex contractu*. *Brown* vs. *Gunning's Curatrix et al.* 462

6. Actions to annul a sale, brought by a complaining creditor, for giving an undue preference to a portion of the creditors of the common debtor, are prescribed by the lapse of one year from the date of the sale. *Maurin & Co.* vs. *Rouquer et al.* 594

PRINCIPAL AND AGENT.

1. If a person acts merely as agent of his brother-in-law, at the sale of his own property, and in superintending it afterwards, he will not be considered as interested, or his acts viewed as an interference with the property, or an exercise of ownership over it. *Vaughan* vs. *Western Marine & Fire Insurance Company.* 54

2. Where the agreement leaves it doubtful whether the agent was entitled to commissions on certain notes received in payment, or only on *monies* received, and the jury find a verdict in the affirmative it will not be disturbed. *Vignie* vs. *Saulet.* 23

3. So where it appeared the defendant gave orders to the intervenors to ship his cotton in their names, it was held that the legal possession and control over

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it remained in him, as owner, through the interposition of these persons, *as his agents*.....*Hamer & Co.* vs. *Lawrence et al.* 58

4. An agent to purchase slaves cannot buy from himself, or put one of his own slaves in, so as to charge the principal with his price, or value; and where there was deception inducing him to settle with the agent he will recover back, as having been allowed in error.....*Brownson* vs. *Fenwick.* 431

PRINCIPAL AND SURETY.

1. The surety who has paid defendant's notes in the hands of a third person without notice of the defence set up, will recover the amount he has paid notwithstanding the eviction and loss of title to the property for which the notes were given.....*Gasquet* vs. *Oakey.* 78

2. The surety in an attachment bond need not be owner of real estate or a freeholder; so that he is solvent and resides within the jurisdiction of the court, it is sufficient.....*Austin et al.* vs. *Latham.* 88

3. In an action on a joint obligation when it is shown, two of the parties signed as sureties of the third, any payments made by the principal debtor will be imputed and go to the extinguishment of the debt, and judgment given for the balance, against the principal and sureties *in solido*.

Brander et al. vs. *Garrett et al.* 451

4. In a suit on *a joint note*, where it is shown the defendant signed as surety for the other maker; although the obligation be *joint only in its form*, yet the surety is bound for the whole debt, or liable *in solido*.

Roberts & Crain vs. *Jenkins.* 453

5. The obligation entered into by the principal and his surety, is not a joint one; but on the contrary, each one is bound towards the creditor for the whole, although as between themselves, the entire debt or sum is due by the principal, and can be recovered of him by the surety who pays.

Bonny & Baker vs. *Brashear.* 385

6. A surety may be sued without his principal..... ..... *ib.*

7. Where the curator fails to comply with his duties, and pay over money, any creditor of the estate may at once resort to his action on the curator's bond against the surety..... ..... *ib.*

8. The surety cannot appeal from a judgment against him and his principal, which the latter has already had reversed on appeal. The release of the principal in the judgment, released the surety, although not a party to that appeal.

Brashear vs. *Carlin, Curator, &c.* 395

9. The obligation of the surety in a curator's bond is that the principal will administer the estate according to law; and his duty requires him to pay all the creditors equally according to their rank.

Brown vs. *Gunning's Curatrix et al.* 462

10. Judicial sureties are bound *in solido;* so each surety in a curator's bond is liable to the action of the creditors of the estate, for the whole amount claimed. *ib.*

11. Sureties in bonds taken in judicial proceedings are bound *in solido;* being entitled to neither division nor discussion; so several sureties in a twelve months bond are each bound for the whole sum. *Woodburn* vs. *Friend et al.* 496

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PROHIBITION.

1. A prohibition is not a writ of right, but the court may grant it on such conditions as will secure to the party who may suffer by it, sufficient indemnity for the trouble, delay and losses he may unjustly sustain.

State of La. vs. *Judge of the First District.* 167

2. An oath is not required to a petition for a writ of prohibition, if the truth of the facts stated in it appear from an inspection of the record and proceedings had in the case. ..... *State of La.* vs. *Judge of the First District* 174

3. Where, by an error of the Judge *a quo* in refusing to allow a *suspensive* appeal, by authorizing an execution to issue, after being divested of jurisdiction, a writ of prohibition is the proper remedy to correct such error. ..... *ib.*

4. A writ of prohibition may issue to suspend the action of an inferior tribunal for a time, and until it legally resumes the exercise of its former jurisdiction. ..... *ib.*

5. The Judge of an inferior court cannot grant an order of seizure and sale after an appeal is taken from *his refusal* to issue the same order, previously applied for. But if *he does*, the proper remedy to arrest his proceedings is by writ of prohibition. ..... *ib.*

6. The authority to grant writs of prohibition is considered in relation to the constitution, which allows to this court appellate jurisdiction only, and is to be confined to matters which have a tendency to *aid that jurisdiction*. ..... *ib.*

PUBLIC PLACES.

1. Ancient plans of a city are admissible in evidence to prove the boundaries of lots sold in reference thereto, and the direction of streets so far as they may extend, although not including the *locus in quo;* and especially when one of the parties claim under those who caused the plans to be made.

Carrollton Rail Road Co. vs. *Municipality No.* 2. 62

2. Where a canal and basin figure on the original plan of a city, but are always used and sold by the proprietors, they will be considered as private property. ..... *ib.*

3. In order to dedicate property to public *use* there must be a plain and positive intention to give and one equally plain to accept. The form is not material. *ib.*

REDHIBITION.

1. In a redhibitory action for the rescission of the sale of a slave, a tender or offer to return the slave must be proved at the trial, to have been made before suit. ..... *Barrett* vs. *Bullard.* 281

2. Actual idiocy might, perhaps, be deemed a redhibitory vice in a slave; although not specially named in the code; but such defect would be apparent to an ordinary observer as to bring the case within the article 2497 of the La. Code. ..... *Briant* vs. *Marsh.* 391

3. Where the evidence establishes the existence of a redhibitory disease at the time of sale, although not perceptible to ordinary observers, or known to the vendors; yet it is sufficient to authorize a rescission of the sale and return of the price. ..... *Riggs* vs. *Duperrier et al.* 418

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RES JUDICATA.

1. In judgments of the Supreme Court, the reasoning is less to be regarded, than the final conclusion announced; so when the decree is positive, without any reservation, it is *res judicata* as to all the matters in dispute.

Plicque & LeBeau vs. *Perrett etc.* 318

2. No matter in what form of action or proceeding, whether by petition, exception or intervention the question may have been presented, if the same question once judicially decided between the parties be again agitated, it is sufficient to create the presumption resulting from the *thing adjudged*, and forms a complete bar..... ib.

SALE.

1. The adjudication is the completion of a sale, so as to invest the purchaser *as owner*, and with the right of possession of the thing sold.

Municipality No. 1 vs. *Cordeviolle & Lacroix.* 235

2. So the adjudication entitles the vendor not only to damages for non-compliance, but to an action for the price..... ib.

3. The sale is perfect between the parties, and the property is acquired to the purchaser on an agreement between them, as to the object sold and the price, even without delivery..... ib.

4. The purchaser may retain the price, when he is in danger of eviction from a previous claim on the property, except where he has been informed of it, before the sale. A claim resulting from an act of the legislature, comes within the exception, as ignorance of it cannot be pleaded..... ib.

5. A claim of the Draining Company on land for its improvement, is not adverse or a disturbance of possession..... ib.

6. Purchasers cannot complain of the failure of the vendor to pass an act of sale, when it was caused by their own acts, in directing the notary not to give up their notes..... ib.

7. When the evidence shows, that the sale from the defendant to the intervenors was only to give the latter a colorable claim to the property (or cotton), the sale was held to be made for the purpose of protecting it from the pursuit of creditors, and void..... *Hamer & Co.* vs. *Lawrence et al.* 58

8. In the sale of property subject to an annual tax, the purchaser takes it subject to all the tax *accruing* after the sale; the vendor being liable for all due up to the time of sale..... *Gourjon, f. m. c.* vs. *Holmes et al.* 232

9. Where the seizure is made and notice given on the 21st June, and the advertisement is dated the 24th of the same month, it will be considered as one day too early. Three days should intervene between the notice of seizure and the advertisement..... *R. McCarty* vs. *J. P. McCarty.* 309

10. The sale of real property cannot be legally made by the sheriff until the 34th day after seizure. But if this time is given, it cannot be objected that the advertisement was posted up a day or two sooner than was required..... ib.

11. A clerical error in the description of a piece of land in the sheriff's advertisement of the sale, not calculated to mislead the party interested, is immaterial. ib.

12. Where a party shows a judgment, execution, sheriff's return thereon,

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and deed of sale, it is *prima facia* evidence of a valid alienation; and the party attacking the sale must show the forms of law have not been complied with. *Walker* vs. *Allen et al.* 307

13. If a purchaser at sheriff's sale does not offer good security, the sheriff must sell again immediately. If he gives any delay, it is at his own risk and he will be liable in damages to the plaintiff in execution, if any are sustained in consequence of such delay. ..... *ib.*

14. The vendee in a conditional sale or *vente à réméré*, has a greater analogy to a usufructuary than to any other bailee of the property of another, as regards the fruits or increase..... *Patterson* vs. *Bonner.* 508

15. Neither the usufructuary or vendee in a sale *à réméré*, can make the children or young of slaves, born during their possession, *their own*..... *ib.*

16. Where there are ambiguities in the boundaries and corners of a tract of land in controversy, between the defendant and plaintiffs, as vendor and vendees, occasioned by leaving blanks in the notarial act of sale, a private act previously executed between the same parties, will be received in evidence to explain and show the true boundaries and corners, when it is not inconsistent with the notarial act..... *Labauve et al.* vs. *Declouet.* 376

17. Where a tract of land is sold as "4 *arpents front with about* 35 *or* 40 *in depth;*" the front to begin at a certain point, and the tract is *bounded on both sides* by plantations, it is a sale *per aversionem;* and the boundaries will control the enumeration of quantity..... *Prejean* vs. *Giroir et al.* 422

18. A sale by the father to his son, not a creditor, *of his estate*, at a sound price, where there is no privity between the latter and the creditors of his father and none between the father and his creditors, *is valid*, although the father, was insolvent at the time, and the son agreed and did apply the *price* to the payment of *a portion* of the creditors: Nor is the mere relationship of the father and son, evidence of fraud..... *Maurin* & *Co.* vs. *Rouquer et al.* 594

19. The sale would be good as to the son, even if it was the intention of the father to defraud his creditors, because the contract of sale was onerous and the purchase made for the full value of the property..... *ib.*

SEPARATION FROM BED AND BOARD.

1. Living unhappily together; having frequent differences, ebulitions and displays of temper, but without any personal or other violence; the want of supplies or necessaries according to the wife's demands; the non-payment of her bills promptly, and for the education of her daughter; the want of support according to her rank and fortune she brought into marriage, and supposed impossibility of the parties ever living together again, are not sufficient *causes of separation from bed and board*..... *Rowley* vs. *Rowley.* 557

2. During the pendency of a suit of the wife for a separation from bed and board, the wife may leave the home assigned her as a residence, on business, and be temporarily absent..... *ib.*

3. A judgment for alimony may be given, even when no separation from bed and board follows..... *ib.*

4. The court may, in its discretion, change the residence of the wife during the pendency of her suit for separation..... *ib.*

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SERVITUDE.

1. The lower one of two adjacent estates, owes a servitude to the upper one, of allowing the waters to pass off from the latter through the natural drains over the land of the former.....*Hays* vs. *Hays*. 351

2. If the proprietor of the lower estate obstructs the natural flow of the waters of the upper estate he will be compelled to remove such obstructions at his cost. *ib.*

SLAVES.

1. A slave held by a deed of trust or mortgage, which is not recorded in this State, to which the slave has been removed, is liable to seizure by a creditor of the original owner.....*Zollikoffer* vs. *Briggs, Lacoste & Co.* 521

2. Slaves held under a sale with the equity of redemption existing, are not liable to the seizure of a creditor of the original owner. He can seize only the equity of redemption..... *ib.*

SUCCESSIONS.

1. Where a claim against an estate is unliquidated, or the curator objects and refuses to approve it, the party may sue on it in the Court of Probates; but he cannot have execution immediately, as it must be paid concurrently with other creditors.....*Anderson's Administrator* vs. *Birdsall's Administratrix*. 441

2. Claims against estates in the course of administration, bear *legal* interest from the time they are due and payable, although unliquidated..... *ib.*

3. Where a party having two capacities, takes possession of property of a succession, and it is doubtful in which capacity he holds, the legal presumption is that he takes in the capacity the law authorizes, and that he will do what it is his duty to do.....*Selby* vs. *Bass et al.* 499

4. So where the widow causes an inventory to be made of her deceased husband's estate, and omits to put some articles in it; renounces the community, but acts as administratrix and as tutrix of her minor children; and then as executrix under a will found, and pays some debts without the order of the judge, she is not liable as intermeddler, when there is no attempt at concealment or fraud shown..... *ib.*

TAXES.

1. Oppositions to the valuation and assessment of property in the city of Lafayette must be made within the time prescribed and advertised, or they will not be listened to in court.....*Council of Lafayette* vs. *Kohn*. 94

2. The assessment roll is admissible in evidence, to show that taxes were duly assessed. If defendant objects, that it is not the true one, he should show it, and call for the right one..... *ib.*

THIRD PURCHASER.

1. A third purchaser of an estate subject to certain mortgages which he as-

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sumes to pay, cannot set up her claims in opposition to the mortgage creditor on said estate. ..... *Kenner & Co.'s Syndic* vs. *Holliday et al.* 154

2. The creditors of an estate are not bound to give security to the purchaser before coming on him for their claims due by it, on the ground that he is in danger of eviction. The right to call on a party to give security implies a warranty against eviction. ..... *ib.*

3. A third person contracting to pay the debt of another and receiving property out of which it was to be paid, cannot oppose the plea of usury, or go into the consideration of that debt, and retain the means placed in his hands to pay it. ..... *ib.*

4. Where the purchaser is actually disturbed in the possession and enjoyment of the thing sold, he can require security before the payment of the price can be demanded. ..... *Ball et al.* vs. *Le Breton et al.* 147

5. A *bona fide* purchaser, without notice, is not affected by fraud in his vendor, who has a legal title to the property sold. ..... *Blanchard* vs. *Castille.* 362

6. A third person who did not sign a notarial act of sale, although it expresses on its face that the *price* was paid, by the vendee in cash, may show by parol evidence, that in fact it was paid partly in cash, which he advanced, and by his note for the balance. ..... *Benoit* vs. *Broussard.* 387

USURY.

1. A person contracting to pay the debt of another, and receiving property out of which it was to be paid, cannot oppose the plea of usury; or go into the consideration of the debt, and retain the means placed in his hands to pay it. *Kenner & Co's Syndic* vs. *Holliday et al.* 154

2. Usurious interest which has been paid, cannot be recovered back. ..... *ib.*

3. Where A gave his note to B for $11,000 payable in 2 years, and received in payment the note of a third person endorsed by B, for $10,000 payable ten days after his own; *Held*, that it was an agreement to give and receive usurious interest and null. ..... *Flower* vs. *Millaudon.* 185

4. An agreement to take even a legal rate of interest, on a larger sum than is *really due*, is usurious. ..... *ib.*

5. So an agreement to make cash advances at 10 per cent. interest thereon, and to receive one third of the profits of the firm to which the advance was to be made, was held to be usurious. ..... *ib.*

6. Accounts which have not been objected to and received by the party, although they contain extravagant charges and usurious interest, will not be re-opened in a suit for a final settlement. Usurious interest once paid cannot be recovered back. ..... *ib.*

WARRANTY.

1. According to the provisions in articles 379, 380 and 381 of the Code of Practice, the vendee of a slave, when sued for the price, will be allowed time to cite in warranty the person to whom he sold, and who promised to pay the debt, although the plaintiff, or original vendor, never accepted him as his debtor. ..... *Brown's Executor* vs. *Copley & Jessup.* 473

WITNESS.

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1. The rule in relation to the competency of witnesses is to be governed by the *lex fori*, with some exceptions, in favor of the local law.

Buckner, Stanton & Co. vs. *Watt.* 211

2. A statute which expressly excludes the drawer of a bill from being a witness in a suit by the holder against the endorser, will not be construed to apply to the *acceptor*. This law being in derogation of the settled rules of evidence will not be extended beyond its letter..... *ib.*

3. So an acceptor who is without interest in a suit by the holder against the endorser of a bill, is a competent witness..... *ib.*

4. The guarantor of a note is a competent witness on the part of the maker, in a suit by the endorsee against the latter; for it is the interest of the witness that the plaintiff should recover, and he is called to testify against his own interest..... *Shipmans & Co.* vs. *Archinard.* 471

5. So where the plaintiffs received the note sued on *after maturity*, the defendant may produce the letter of the payees and original holders, to show that the suit is premature, *and that a certain time* had been allowed for payment. *ib.*

6. The competency of witnesses is a distinct subject of legislative enactment. It is expressly and precisely treated of by the Code, (article 2260,) and it lays down all the great and leading principles of the law of evidence.

Waters vs. *Petrovic & Blanchard.* 584

7. The article 2260 declaring who shall be a competent witness to prove any covenant or fact whatever, in civil matters, makes no exception of any particular covenant or fact whenever parol evidence is admissible under the provisions of the Code; and the act of 27th March, 1823, so far as it renders the maker of a note, &c., *an incompetent witness* in an action against the *endorser*, is *repealed*, by the last and repealing article of the Louisiana Code. *ib.*

8. The repealing act of 1828, left in force the Louisiana Code, and also the law respecting the competency of witnesses; leaving the question still open, as to the competency of makers of notes, &c., to be witnesses, &c., to be determined by the Code or act of 1823..... *ib.*

9. A notary public, who is the son of one of the endorsers on a note, is not thereby rendered incompetent to make a protest and give notice to all the parties..... *ib.*

10. A sheriff, who is the son of the plaintiff, in execution, is nevertheless competent to execute it..... *ib.*

11. So the grand-father of a legatee is a competent witness to a Will. The official act may be valid, and yet the public officer, be incompetent as a witness in any controversy growing out of the act..... *ib.*